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J. Phillip *P. L. I.*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190467

DATE: January 27, 1978

MATTER OF: Engle Acousti & Tile, Inc.

DIGEST:

1. Bid which contained apparent error in unit price (misplaced decimal point), although total price was based on extended price (intended unit price multiplied by required number of units), may be considered for award on basis of total price, even though invitation provided that in case of discrepancy between unit price and extended price, unit price would prevail.
2. Bid bond on which effective date is not extended when low bidder is requested to extend bid acceptance period is distinguished from cases where bidder fails to either (1) execute bid bond or (2) execute bid bond with effective period longer than bid acceptance period. In latter situations bid is nonresponsive, whereas in former situation bid is responsive.

By letter of October 12, 1977, counsel for Engle Acoustic & Tile, Inc. (Engle), protested against the proposed award of a contract by the General Services Administration (GSA) to the Dawson Construction Co., Inc. (Dawson).

The contract in question was for Project No. NMS 75112 - Phase XII, Tenant Layout and Finishes at the Federal Building in Jackson, Mississippi. The invitation for bids (IFB) was issued on July 5, 1977, and called for, in addition to one lump-sum base bid, unit price bids on 56 items. The IFB provided that for purposes of award the relative standing of the bidders would be determined by adding to the base bid the total of the 56 unit prices as extended by the respective quantities specified on the bid form. On page 7 of the bid form, the following notation appeared:

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"In case of a discrepancy in extending unit prices, the unit prices will be considered correct."

The bids were opened on September 15, 1977, and the apparent low bidder was Dawson with a bid price of \$1,823,820.83. Engle's bid price of \$1,872,671.90 was second low. Pursuant to the above notation on page 7 of the bid form, minor modifications were made to Dawson's bid price to reflect exact cost in place of the rounded-off dollar figures given in Dawson's bid.

Engle filed a bid protest with the contracting officer, pointing out that there was a discrepancy between Dawson's unit price for item UP-A3 and the extended bid price. Engle states that, if Dawson's unit price of \$39.00 for item UP-A3 is multiplied by the number of units (103,400) called for by the IFB, the product is \$4,032,600 rather than \$40,326 as indicated on Dawson's bid form. Engle contends that in accordance with the above notation (i.e., in case of a discrepancy in extending unit prices, the unit prices will be considered correct), the unit price of \$39.00 should govern increasing Dawson's price to over five million dollars and making Engle the low bidder. Engle further contends that the discrepancy between the unit price and the extended price created an ambiguity which cannot be resolved from the bid documents because neither \$39.00 nor \$0.39 (the amount arrived at by dividing the extended bid price by the number of units called for by the IFB) is a reasonable and plausible price for the work to be performed. Engle also argues that Dawson should not be allowed to correct its unit price since such a correction would displace Engle as the low bidder.

By mailgram of January 17, 1978, Engle raised an additional ground of protest. According to Engle, Dawson's bid bond expired on January 13, 1977, and, there being no bid bond security, Dawson's bid was therefore nonresponsive.

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The procedures for handling mistakes in bids are set forth in section 1-2.406 of the Federal Procurement Regulations (FPR) (1964 ed. circ. 1), which provides, in pertinent part, as follows:

"§1-2.406 Mistakes in bids.

"§1-2.406-1 General.

"After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this § 1-2.406. Such actions shall be taken prior to award.

"§1-2.406-2 Apparent clerical mistakes.

"Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are: obvious misplacement of a decimal point; obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and obvious mistake in designation of unit. Correction shall be reflected in the award document." (Emphasis added.)

In order to invoke the provisions of FPR § 1-2.406-2, the mistake sought to be corrected must be obvious on the face of the bid, i.e., the contracting officer, without benefit of advice from the bidder, must be able to ascertain the intended bid. 46 Comp. Gen. 77 (1966). In the present case, there was a discrepancy between the unit

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price (\$39.00) and the extended price (\$40,326), which, as previously mentioned, if divided by the number of required units equals 0.39. According to GSA, since the other bid prices for this item ranged from \$0.62 to \$0.74 and the Government estimate was \$1.50, the contracting officer concluded that (1) \$0.39 was a reasonable price for the item, (2) the \$39.00 was erroneous and (3) it was apparent that Dawson had misplaced the decimal point and had, in fact, intended to bid \$0.39 for this item. Dawson was requested to verify its bid. Dawson confirmed that it had intended to bid \$0.39 on item UP-A3 and, pursuant to FPR § 1-2.406-2, it was determined that Dawson's bid should be corrected.

Engle contends that neither \$39.00 nor \$0.39 is a reasonable price for this item, pointing out that the average of the other five bids for this item is 73 percent higher than Dawson's corrected bid of \$0.39, while the difference between the high and low bid among the other bids is only 19 percent. Engle also points out that the Government's estimate is 285 percent higher. While, mathematically, this would appear to be a strong argument, we note that on several other items, the prices of which are presumably correct, there is a wide variance between Engle's and Dawson's unit prices. For example, for item UP-A18 there is a difference of approximately 199 percent between Engle's unit price (\$18.10) and Dawson's unit price (\$54.50), 91 percent difference on UP-A2 and 57 percent for item UP-A19. Also, as might be expected, for most of the items Engle's bid prices are consistently higher than Dawson's. Thus, the only conclusion that we are able to reach is that wider than normal variations in bid prices are to be expected where, as in the present case, there is competition and bidders are required to bid on a large number of items. Therefore, we do not believe that the variation in the present case establishes that the \$0.39 is an unreasonable price. For that matter, in similar cases where there was a larger than normal variation we have allowed correction. See B-179447, October 29, 1955; 36 Comp. Gen. 429 (1956).

Moreover, we are of the view that Engle cannot rely on the notation on page 7 of the bid form that, in case of error in the extension of prices, the unit price will govern. In this regard, our Office has held that, although an invitation contains such a provision,

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where there appears to be no basis for reasonable doubt but that the unit price was in error rather than the extended amount, the latter price should govern. 51 Comp. Gen. 283 (1971); 46 Comp. Gen. 298, 304 (1966); 36 Comp. Gen. 429 (1956). In the present case, the unit price of \$39.00 is so grossly out of line with the Government's estimate and the other bid prices for this item that there can be no doubt that the unit price was in error. In accord, see B-164453, July 16, 1968, where extending the bid price on the basis of the unit price bid would have led to a bid price four times as great as that of the highest bid on the item. Here extending the bid on the basis of the unit price bid would result in an extended bid about 53 times greater than the highest bid for the item and a total bid for the project about \$3,900,000 higher than the next low project bid of \$1,872,871.90.

Engle cites 51 Comp. Gen. 283 (1971) and 49 Comp. Gen. 12 (1969) in support of its contention that correction of Dawson's bid should not be allowed. We believe that both of these cases can be distinguished from the present case. In neither of the cited cases was it apparent from the face of the bid whether the errors occurred in the unit prices or in the extended prices. In the present case there is no doubt that the error occurred in the unit price, since the unit price of \$39.00 is grossly out of line with the other bid prices for the item, and it has not been established that the corrected price of \$0.39 is unreasonable.

In light of the above, we do not believe that there is any merit to Engle's contention that Dawson should not be allowed to correct its unit price since such a correction would displace Engle as the low bidder. Since it is apparent that the error was in the unit price, rather than the extended price, the latter price would govern and Engle would not be the low bidder. Even if we were to assume, for the sake of argument, that the correction would displace Engle's low bid, such a correction is permissible. FPR § 1-2.406-3(a)(2) provides, in pertinent part, as follows:

"(2) A determination may be made permitting the bidder to correct his bid

where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. * * *

We are of the view that the existence of the mistake and the bid intended are ascertainable substantially from the invitation and bid itself. Therefore, the requirements of the above FPR provision are satisfied.

Finally, we consider the allegation by Engle that since Dawson's bid bond expired prior to award, its bid was nonresponsive and cannot be accepted by GSA. Under the terms of the invitation, bidders were required to submit with their bids a bid guarantee in the amount of 20 percent of the amount of the bid. Dawson complied with this requirement. Its bid bond covered the original bid acceptance period (45 days) plus 60 days. If, due to extensions of the bid acceptance period, the bid bond period expired, we do not believe that this precludes GSA's acceptance of Dawson's bid. The extensions of the bid acceptance period were for the benefit of the Government and there was nothing in the invitation requiring an extension of the bid bond. Certainly, Dawson's bid could not be considered non-responsive since at the time of bid opening its bid was responsive in that it met the requirements of the invitation.

We have held that the bid bond requirement of an invitation is a material part of the invitation which may not be waived and noncompliance requires the rejection of such bid as nonresponsive. 38 Comp. Gen. 532 (1959). We have also held that failure by a bidder to execute a bid bond effective for the entire bid acceptance period renders its bid nonresponsive.

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McNamara-Luns Vans and Warehouses, Inc.--Reconsideration,
B-188100, August 26, 1977, 77-2 CPD 149, Munck Systems,
Inc., B-186749, October 19, 1976, 76-2 CPD 345. However,
there is a clear distinction between the above cases and
the instant matter in that in the present situation the
invitation did not require that the bidders obtain an
extension of the original bid bond or furnish an addi-
tional bond in the event the acceptance period was
extended beyond the date fixed by the terms of the invita-
tion. In the present case, we do not have a failure to
comply with a material requirement of the invitation which
rendered the bid nonresponsive; nor is there involved the
waiver of a material requirement of the invitation to the
prejudice of other bidders. See 39 Comp. Gen. 122 (1959)
where there was upheld an award to a low bidder who was
not requested to extend his bid bond or to submit proof
of formal extension of the bid bond.

For the above reasons, Engle's protest is denied.


Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

J. Phillips
P.L.I.

IN REPLY
REFER TO: B-190467

January 27, 1978

United States Magistrate John R. Countiss III
United States District Court for the
Southern District of Mississippi
Jackson Division
P.O. Box 2091
Jackson, Mississippi 39205

Dear Magistrate Countiss:

We refer to your temporary restraining order issued on January 19, 1978, pending the disposition of a bid protest before our Office, in the matter of Engle Acoustic & Tile, Inc. v. General Services Administration, Civil Action No. J78-003.

Enclosed is a copy of our decision of today denying Engle's protest.

Sincerely yours,

R. F. Kellum

Deputy Comptroller General
of the United States

Enclosure